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Paper No. 10

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JUN 2 2003

In re Application of:	:	
Barber, <i>et al.</i>	:	DECISION ON PETITION
Application No. 09/781,820	:	TO WITHDRAW HOLDING
Filed: February 12, 2001	:	OF ABANDONMENT
Attorney Docket No.: 37310-000188/US	:	

This is a decision on the petition filed January 21, 2003, and supplemented on May 19, 2003, to withdraw the holding of abandonment of the above-identified application for which no fee is required.

The petition is **granted**.

The application was held abandoned for the apparent failure of applicant to timely file a response to the Office action mailed on June 03, 2002 to the attorneys of record, Brown and Michaels (B&M), at their address of record. A Notice of abandonment was mailed December 18, 2002, to the attorneys of record Harness, Dickey & Pierce¹ (HDP), at their address of record.

Petitioner asserts that the Office action of June 03, 2002, was not received. The petition of January 21, 2003, includes a statement from the firm of B&M that the Office action of June 03, 2002, was not received, and a copy of B&M's docket records that show where the non-received Office action would have been entered had it been received by the practitioner. The supplemental petition includes a statement from the firm of HDP that indicates that the file jacket for the above identified application was transferred from the firm of B&M to the firm of HDP. The statement further indicated that the file jacket received from the firm of HDP did not contain the office action of June 03, 2002.

A review of the written record indicates no irregularity in the mailing of the Office action, and in the absence of any irregularity there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing

¹A Revocation of Power of Attorney, Substitute Power of Attorney and Change of Address was filed by Harness, Dickey & Pierce on August 14, 2002. A Notice of Acceptance was mailed by the United States Patent and Trademark Office (PTO) on August 23, 2002.

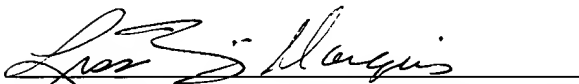
that the Office action was not in fact received. The showing required to establish the failure to receive an Office action must include a statement from the practitioner stating that the Office action was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioners' statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c).

The petition satisfies the above-stated requirements. Accordingly, the application was not abandoned in fact.

In view of the above, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The application file is being forwarded to the Technology Center 2800 support staff for remailing of the June 03, 2002, Office action.

Inquiries regarding this decision should be directed to Lissi Mojica Marquis at (703) 308-2260.


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